

## WHAT CREW HAS LEARNED ABOUT DON YOUNG

The Department of Justice, in response to a court order and after insisting there was no document from its investigation of Rep. Don Young (R-AK) it could disclose without violating Rep. Young's privacy interests, produced hundreds of pages from the FBI's investigative files to CREW several weeks ago. Even with redactions, those documents tell a remarkable story of greed and corruption. They also reveal what we have suspected for a long time – DOJ's Public Integrity Section killed the Young prosecution because it did not have 100% confidence it could get a conviction. Ironic given the Department's decision to prosecute former Sen. John Edwards under a novel, unprecedented theory of law.

The documents pertain to an investigation of Rep. Young's role in procuring a \$10 million earmark that benefitted one of his campaign contributors and that was inserted into a Fiscal Year 2006 transportation bill after both houses had voted on the bill. In 2008, Congress itself demanded that DOJ investigate what has come to be called the "Coconut Road" earmark. The FBI documents reveal that six months before this demand, in June 2007, the FBI and several Florida U.S. Attorneys' Offices already had opened a public corruption investigation of Rep. Young for "systemic abuse" of his position of trust, initially described as "the receipt of funds from constituents in localities which were then awarded funds for Federal projects that may not have been requested or in the region's long term plans."<sup>1</sup>

Over the course of three years, the FBI, with assistance from U.S. Attorneys' Offices, interviewed dozens of witnesses and amassed a wealth of evidence concerning not only Rep. Young's role in the Coconut Road earmark, but his misuse of campaign funds to finance personal expenses of both himself and his wife Lu Young. The two used Rep. Young's campaign account as a personal piggy bank they reached into to cover such things as personal travel home to Alaska,<sup>2</sup> restaurants unrelated to campaign activities, and laundry and dry cleaning.<sup>3</sup> According to at least one witness, Rep. Young treated any travel to Alaska as campaign related, regardless of its purpose.<sup>4</sup> Both he and his wife routinely obtained \$300 cash advances for their trips to Anchorage to cover tips and incidental expenses, a practice eventually stopped on the advice of counsel.<sup>5</sup> One witness described cash left for Rep. Young either in his hotel room or his condominium.<sup>6</sup> Lu Young also sought reimbursement from campaign funds

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<sup>1</sup> Young Document 2 (references are to the bates numbers on the documents produced by the FBI).

<sup>2</sup> *See, e.g.*, Young Document 192.

<sup>3</sup> Young Document 193.

<sup>4</sup> Young Document 194.

<sup>5</sup> Young Document 195.

<sup>6</sup> *Id.*

for additional expenses incurred during trips to Alaska, such as lunches with friends.<sup>7</sup> In addition, Rep. Young kept a sports utility vehicle parked in the congressional garage for which he sought monthly reimbursement from campaign funds for mileage, even though the vehicle apparently never left the garage.<sup>8</sup>

Witnesses interviewed by the FBI paint a fairly negative picture of Rep. Young's wife Lu, who perceived herself to be "the elected official," but also acted as a kind of office manager, screening people who came into Rep. Young's office.<sup>9</sup> Described as having "a sense of entitlement about most things," she submitted many of her personal expenses for reimbursement from campaign funds, including meals with friends and family.<sup>10</sup> This practice apparently stopped at some point after years of abuse on the advice of counsel.<sup>11</sup> Another witness told the FBI Lu Young received "countless bracelets and ivory while in the DC office," as well as diamond earrings during a Las Vegas trip,<sup>12</sup> while another described Rep. Young and his wife as the recipients of lavish gifts.<sup>13</sup>

Travel to the Youngs' two houses in Fort Yukon, Alaska, was covered in large part by campaign funds. The campaign typically paid half of the cost of a charter flight to Fort Yukon, with the congressional office picking up the rest of the cost, which it attributed to Lu Young.<sup>14</sup> In some instances, however, the campaign paid for the entire cost of the chartered flight.<sup>15</sup> The Youngs also used these flights to transport building supplies.<sup>16</sup> Even though these trips were paid for with campaign funds, no campaign events ever took place in Fort Yukon.<sup>17</sup>

On multiple occasions, Rep. Young went on hunting trips to various hunting resorts in New

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<sup>7</sup> *Id.*

<sup>8</sup> *See id.*

<sup>9</sup> Young Document 193.

<sup>10</sup> Young Document 194.

<sup>11</sup> Young Document 193.

<sup>12</sup> Young Document 198.

<sup>13</sup> Young Document 250.

<sup>14</sup> Young Document 196.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

York, Texas, Arizona, New Mexico, and Montana paid for with campaign funds.<sup>18</sup> In some instances, these trips coincided with campaign trips, but the hunting trips themselves were not campaign events.<sup>19</sup> In at least one instance, a planned fund raising event was never held, but the hunting trip still went forward.<sup>20</sup>

Rep. Young failed to disclose these hunting trips on his annual financial disclosure forms. On August 17, 2010, DOJ's Public Integrity Section referred this matter to the House Committee on Standards of Official Conduct on August 17, 2010, for possible violations of the Ethics in Government Act.<sup>21</sup> Apparently the House Ethics Committee already had commenced its own investigation, as the referral memo references the fact Rep. Young, through counsel, had previously provided the documentation regarding these trips to the committee.<sup>22</sup>

By December 2008, working with individuals from several U.S. Attorney's Offices and DOJ's Public Integrity Section, the FBI had gathered "a vast amount of evidence."<sup>23</sup> For its part, the FBI's Washington Field Office had "invested a large amount of resources into the case, including two agents, an intelligence analysts and one financial analyst."<sup>24</sup> It appears there were several investigative teams pursuing different allegations with the intent of charging Rep. Young "and his co-conspirators" in a single indictment in 2009.<sup>25</sup>

The FBI files contain a draft indictment charging Rep. Young with Honest Services Fraud, described as follows:

Donald Young, in his capacity as Congressman of Alaska, accepted and expected things of value (trips, meals, golf, etc.) from lobbyists, and in exchange, he would provide them with official actions (meetings, letters, legislation).<sup>26</sup>

The draft indictment also charges Rep. Young with false statements for failing to disclose gifts

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<sup>18</sup> Young Documents 138-9, 197, 237.

<sup>19</sup> Young Document 197.

<sup>20</sup> *Id.*

<sup>21</sup> Young Document 166.

<sup>22</sup> *Id.*

<sup>23</sup> Young Document 337.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*, Young Document 339.

<sup>26</sup> Young Document 355.

and trips he received from lobbyists.<sup>27</sup>

In the end, however, despite years of work and mountains of evidence, DOJ's Public Integrity Section pulled the plug on the Young investigation. An August 30, 2010 FBI memo notes the following:

After review by the Chief of the Public Integrity Section, Department of Justice, it was determined that there was not evidence beyond a reasonable doubt to ultimately convict Congressman Young. Instead, the FBI has forwarded a letter outlining certain actions taken by Congressman Young and will leave punishment to the discretion of the Ethics Commission.<sup>28</sup>

In typical fashion, the Ethics Committee exercised its discretion to do exactly nothing.

Nevertheless, some documents suggest Rep. Young may be the subject of an ongoing investigation. The FBI has made a number of redactions relying on FOIA Exemption 7(A), intended to protect against interference with "enforcement proceedings."<sup>29</sup> These include documents that appear to pertain solely to Rep. Young, such as documents summarizing the case against Rep. Young and the objective in moving forward.<sup>30</sup>

Finally, separate and apart from Rep. Young, the documents reveal the practice of at least some congressional staff to seek pay cuts or not accept pay raises before an election to avoid the one-year lobbying ban imposed on staff earning above a certain percentage of their member's salary. In this way, if a member lost, the staffer would have more options, including the very lucrative option of lobbying members from the outside.<sup>31</sup> According to one former staffer who did this, none of his responsibilities and duties changed when he lowered his salary. This same staffer admitted his work on the Transportation and Infrastructure Committee and the relationships he made there were key to his ability to obtain earmarks for his clients once he became a private sector lobbyist.<sup>32</sup>

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<sup>27</sup> Young Document 357.

<sup>28</sup> Young Document 173.

<sup>29</sup> 5 U.S.C. § 552(b)(7)(A).

<sup>30</sup> Young Documents 183, 186. *See also* Young Document 235, 249.

<sup>31</sup> Young Document 244-245, 247, 248.

<sup>32</sup> Young Document 248.